

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PATRICK GENE RUSSELL, #18016446,	§	
PLAINTIFF,	§	
	§	
v.	§	CIVIL CASE NO. 3:18-CV-2302-S-BK
	§	
DALLAS COUNTY SHERIFF	§	
DEPARTMENT, ET AL.,	§	
DEFENDANTS.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this *pro se* civil rights case was referred to the United States magistrate judge. For the reasons that follow, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order.


Plaintiff filed an *Application to Proceed in forma pauperis* indicating that he was not seeking to proceed without prepayment of fees and that he had sufficient funds in his credit union account to cover the filing fee. [Doc. 4 at 4](#). Thus, on September 12, 2018, the Court ordered Plaintiff to pay the \$400.00 filing fee, by mail or in person, to the U.S. District Court Clerk, 1100 Commerce St., 14th Floor, Dallas, TX 75242. [Doc. 5](#). The deadline for Plaintiff's fee payment was October 10, 2018. As of the date of this recommendation, however, Plaintiff has not paid the filing fee, nor has he sought an extension of time to do so.

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. [Larson v. Scott, 157 F.3d 1030, 1031 \(5th Cir. 1998\)](#). "This authority flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending

cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Plaintiff has been given ample opportunity to respond to the Court’s order and pay the \$400.00 filing fee. He has impliedly refused or declined to do so. Consequently, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order and for lack of prosecution. See **FED. R. CIV. P. 41(b)** (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified).

SO RECOMMENDED on November 9, 2018.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See **28 U.S.C. § 636(b)(1)**; **FED. R. CIV. P. 72(b)**. To be specific, an objection must identify the finding or recommendation to which objection is made, state the basis for the objection, and indicate the place in the magistrate judge’s report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See *Douglass v. United Services Automobile Ass’n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, **28 U.S.C. § 636(b)(1)** (extending the time to file objections to 14 days).